Q (By MR. GROSSMAN) Mr. Lucier, getting back to the date of this. On November 21st -- I'm sorry. On September 21st, 1996, you were 46 years old; is that correct?
A Uh, yes.
Q And -- and you entered your signature declaring that to the best of your knowledge and belief all of the answers given in this part too are correctly recorded, complete and true?
A Uh, yes.
Q And it was witnessed by someone; is that correct?
A Uh, yes.
Q Now --
A Well, she was -- I believe she was the one that wrote this out.
Q Yes. She was the witness for your signature, correct?
A Uh, yeah.
Q And do you see on line -- it says ten, three quarter pack per day, 25 years?
A Right.
Q Now, you were 46 years old. So you told them that you had been smoking three-quarters of a pack per day since you were 21 years old?
A Uh, that's what's written here. I don't specifically recall telling her that, but I mean that's what's written here.
Q And that's what you signed your name to; is that correct?
A Uh, yes.
Q That isn't correct according to your testimony; is that correct?
A That's correct.

Q Let's turn back to your early smoking as you've described it, not on what you told the insurance company but to what you've told the jury. All right?
A Okay.
Q Now, as a starting point, you told Miss Alexander that you never tried to stop smoking until 1992?
A Uh, to seriously stop smoking. There may have been times I tried, but I don't recall any.
Q All right. And it's your testimony, as it was last year, that it was then in 1992 that you first, in your words, realized that you were, in your words, addicted?
A Uh, yes. Based on trying to stop smoking.
Q And before -- before trying to stop smoking, you believed you could stop?
A I believe so. I think so.
Q Okay. With that as a predicate, let's go back to when you were in Rochester as a young child.
A Okay.
Q You described an incident when you with a couple of other young kids snuck under a bridge with a cigarette. Remember that?
A Snuck under a bridge?
Q Well, you went under a bridge with a cigarette.
A Okay.
Q You did mean not to get caught, didn't you?
A I don't think it really -- well, we wouldn't have wanted to get caught, but it wasn't that I went under the bridge to smoke a cigarette to not get caught. I --

http://legacy.library.ucsf.edu/tid/epn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jshd0001

Q You knew you were doing something you weren't supposed to do?
A Uh, I didn't feel that way. It was just kids.
Q Well, at no time through your teenage years did you ever smoke in front of your parents; isn't that right?
A Uh, correct.
Q That's because you knew they would disapprove; isn't that right?
A I believe so.
Q Now, you went to the local catholic school in Rochester which happened to be Our Lady of Lourdes?
A Yes.
Q You don't remember everything that you were taught there, do you?
A No.
Q But it was a good school?
A Yes.
Q And your parents only chose good schools?
A They tried.
Q And it was an accredited school?
A Yes.
Q And you understood it did everything necessary to maintain its accreditation with the state?
A I don't know that personally, but I assume so.
Q In fact, that's true of all the schools you went to, isn't it?
A Yes.
Q Now, in fourth grade -- you had fourth grade with

Mrs. Rigney, didn't you?
A Who?
Q Mrs. Rigney?
A No.
Q Rigney?
A No.
MR. GROSSMAN: May I approach the witness, your Honor?
THE COURT: Yes.
Q (By MR. GROSSMAN) Mr. Lucier, I've handed you a -- Mr. Lucier, I've handed you what is marked as Defendant's Exhibit ALC-001066.
(Defendant R.J. Reynolds Exhibit ALC-001066 was marked for identification.)
THE WITNESS: Right.
Q (By MR. GROSSMAN) And that's your permanent record from Our Lady of Lourdes school, isn't it?
A I don't know. This is the first time I've ever seen it, but I'll take your word for it.
Q Well, you see that this was produced under subpoena by Our Lady of Lourdes school.
A Okay.
Q If you look on the second to last page, Sister Kathleen Lurz of Our Lady of Lourdes declared this is an accurate copy of your transcript.
A Okay.
Q You have no reason to believe otherwise; is that right?
A No.
MR. GROSSMAN: We would offer this in evidence, your

Honor.

http://legacy.library.ucsf.edu/tid/epm05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

THE COURT: Objection?
MS. ALEXANDER: No objection.
THE COURT: All right. Received.
(Defendant R.J. Reynolds Exhibit ALC-001066 was received into evidence.)
Q (By MR. GROSSMAN) Now, Mr. Lucier, I'd like to, if I may, put this on the Elmo. There's nothing to be ashamed about here.
Do you see in the left column, it says school term? And it's hard to read on the copy on there, but there's '56 when you were kindergarten and '57, First Grade, and so forth.
A I don't see the -- oh, okay. Yes.
Q And in the left column on "School Year" for 1960, it has Fourth Grade. Four?
A 1960?
Q Yes. The second to the last entry.
A Going this way? Or going --
Q Going in the left column -- in the left column.
A Okay.
Q And you see in the next column over, it says, "Grade"?
A Grade, yes.
Q And then it has for Grade Four, 1960, and for Grade Five, 1961?
A Yes.
Q And in the right column, it says, Teacher for Grade Four, Mrs. Rigney, and for Grade Five, Sister Boniface?
A Yes.

Q Okay. Now, do you see in the column where I'm pointing my finger up here?
A Okay.
Q You took a course entitled, Science healthy -- Health and Safety.
A Uh --
Q And you did quite well.
A Yes. I see it.
Q Do you recall the textbook you used in that course?
A No.
Q Do you recall taking the course?
A No.
Q But you don't deny that you took the course, do you?
A I can't. It's right here.
Q Okay. Thank you.
Now, as you were maturing in Rochester and got up to the fifth grade, you were becoming interested in the world around you, weren't you?
A Yes.
Q And you spoke earlier about getting certain magazines in your home?
A Uh, yes.
Q For example, you got LIFE from a very early age, didn't you?
A Yes.
Q By your testimony, you began looking at it in 1956 or seven when you were six or seven years old; is that right?
A Yes, I believe so.

Q And the same is true of the Saturday Evening Post?
A Yes.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

Q And your family started subscribing to TIME magazine as far as back as when you were in the sixth grade right after you moved to Saint Louis?
A I'm sorry? Again.
Q Oh, sure.
Your family started to subscribe to TIME magazine when you were in the sixth grade?
A I -- no, I think it was before that.
Q Okay. Okay. Well, you've read TIME magazine pretty regularly ever since you were in the sixth grade.
A Uh, I would say more starting toward eighth grade as far as regular.
Q Okay. But you've been -- you looked at it before then, and you've been regular since the eighth grade?
A Uh, generally speaking.
Q And while you lived in Rochester, your family subscribed to the Rochester Times which was the predominant local newspaper; is that right?
A Yes.
Q In fact, you were a paperboy aide, weren't you?
A Yes.
Q And you read The Times Union at that time, although you didn't read every page.
A Uh, comics.
Q Well, you -- you would look at it regularly, but not every day?

A Uh, as far as what? As far as looking at the comics?
Q Just going through it. Look at the comics, look at sports, look at whatever.
A I don't think sports. I think mainly the comics.
Q Okay. Fair enough.
As a child in the fifties you used to watch the Huntley-Brinkley Report that was on the NBC Nightly News?
A Uh, yes.
Q And then the time came, around the Seventh or Eighth Grade, when you switched to the CBS Evening News with Walter Cronkite?
A I believe -- generally, yeah. Yes.
Q And you were a regular viewer of those things, weren't you?
A Yeah.
Q You also -- you had an interest in the news, and if CBS had White Papers or CBS Reports or anything like that, you used to tune in?
A If I caught it, yes.
Q And you remember Edward R. Murrow way back in the fifties as well?
A Uh, yeah.
Q And as you've told us, if Huntley and Brinkley or Walter Cronkite had an article on smoking and health, you would have watched it?
A I don't think I said that. If I -- if I caught it -- if I caught it, I probably would have watched it.
Q You watched regularly, and if it were on the show, you

would have watched it?
A Uh, because I watched it on a more or less regular basis.
Q Now, from way back, way, way back, you've heard the term

http://legacy.library.ucsf.edu/tid/epn05a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

"coffin nail" to describe cigarettes?
A Yes.
Q And from way, way back you've heard the term "cancer stick" to describe cigarettes?
A Uh, I don't know about the cancer sticks. I remember -- I could have. I just -- I really don't remember.
Q Well, if I could just refresh your recollection because -- this is on page 220 of your deposition --
A Okay.
Q -- last year on July 24th.
MR. GROSSMAN: And I don't think this is in controversy, Miss Alexander, but page 220, line 11 through 15.
MS. ALEXANDER: Okay.
Q (By MR. GROSSMAN) Mr. Lucier, I asked you at that time, "Did you ever hear the term "cancer stick" used for cigarettes?" And you said, again, about the same time, way back when you heard coffin nails?
A Okay.
Q Way back, and you said, "Yeah."
A Okay.
Q And similarly, you heard the term "nicotine fit" for people who wanted another cigarette from way back when you were a kid?
A Again, I --
MS. ALEXANDER: Well, object.

THE COURT: I can't hear. What's the objection?
MS. ALEXANDER: Objection; misstates the testimony.
THE COURT: It's just a question.
MR. GROSSMAN: Yeah. It's just a question.
THE WITNESS: I don't know. I don't really remember.
Q (By MR. GROSSMAN) Well, again, on the same age, I asked if you ever heard the term "nicotine fit." And you said, "Yes."
A Okay.
Q And I said, "When did you hear that?"
You said, "I really don't know. I mean, I've heard it, but I can't place it as far as --"
I said, "Also way back?"
And you said, "Yeah."
A Okay.
Q Okay. Now, you moved to Saint Louis in the summer of 1961, right?
A Yes.
Q And you had Sixth and Seventh Grade at Saint Joseph's school?
A Uh, yes.
Q And then Eighth at St. Roch's?
A Yes.
Q And you lived in your new home, new to you, new to your family, up on the third floor in your own room?
A Yes.
Q You had a good deal of privacy?
A Uh, no. Not --

Q Not with ten brothers and sisters?
A And assorted friends and --
Q But you were well away from your parents?
A No.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

Q You lived on the second floor.
A Well, they were directly beneath me and one over. I'm not sure what you mean by "well away."
Q Is it your testimony that you were able to hide your smoking in your house?
A Uh, for the most part, yes.
Q Now, in 1961, you've testified you started smoking cigarettes with your sister Therese?
A Yes.
Q And you've testified that your mother smoked Kents?
A Yes.
Q And, in fact, the cigarettes that your sister Therese brought you were Kents; isn't that right?
A Uh, not all the time, but I'd say most of the time.
Q She and you got them from packages lying around the house?
A Yes.
Q And the fact that you smoked Kents at that period of time was simply a function of their being most available; isn't that right?
A I'd say so, yes.
Q Now, the -- your counsel discussed some advertising with you, and I'm going to come back and forth to that. But most of those ads were ads you saw when you went to the lawyers' office to review boxes of ads; is that correct?

6891

A I'm -- what ads are -- ads that I've seen in my life outside the --
Q The ads that you've testified to this morning.
A Okay.
Q Those were ads that you saw in the boxes at your attorneys' offices; is that correct?
A Well, they were representative of ads that I had seen throughout the course of my life.
Q I -- I guess we're having a --
A A communication problem.
Q -- a communication problem. That's not what I'm asking.
A Okay.
Q You -- you located those ads in the boxes at your attorneys' offices; is that correct?
A Yes.
Q Okay. You didn't bring those ads to your counsel. Counsel showed them to you; isn't that right?
A No. Counsel didn't show them to me. Counsel placed the box on a table. They left. I went through the box. I selected the ads.
MR. GROSSMAN: Counsel, Miss Alexander, I'm going to read from July 26th, page 176 line 12 through 23. Let me know when it's okay.
MS. ALEXANDER: I'm sorry. What was the page again?
MR. GROSSMAN: 176.
MS. ALEXANDER: And the line?
MR. GROSSMAN: The line is from 12 through 22 -- 23.
MS. ALEXANDER: Okay.

6892

Q (By MR. GROSSMAN) Okay. Mr. Lucier, I asked you the following questions and you gave the following answers last year. I asked you: Those ads had been shown to you at a previous time, hadn't they?
And you said: Yes.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

I asked you: They were shown to you at meetings that you had with -- at least four or five meetings that you had with your counsel; is that correct?
And you said: Yes.
I asked you: You didn't bring those ads to your counsel; isn't that right?
You said: Correct.
And then I asked: Counsel showed them to you?
And you said: Yes.
A I think we're -- may I? I think --
Q There's actually not a pending question, but if you want to say something.
A Okay. It is exactly as I described. Perhaps I misunderstood what you meant by counsel showing me. They supplied the box, as I said, and then they left the room. I selected the -- the ads and gave them to my lawyers.
Q Okay.
A They didn't -- they did not come and show me, you know, specific ads. In fact, they showed me no ads. The ads were in a box and I selected them.
Q Well, let's put it this way, you hadn't asked to see any of the ads; isn't that correct?
MS. ALEXANDER: Your Honor, I think it's attorney-client

and privilege content.
THE COURT: Sustained.
Q (By MR. GROSSMAN) Okay. May we approach?
THE COURT: Yes.
(The following bench conference was then had.)
MR. GROSSMAN: I asked exactly the same --
THE COURT: Please, please.
MR. GROSSMAN: I'm sorry. Let me know when.
THE COURT: No, no. I don't want the jurors to overhear.
MR. GROSSMAN: I asked exactly the same question at deposition without objection and drew an answer. So if it is privileged, and I don't believe it is because it's not -- it's not a question of advice but rather communication of information, if it were privileged, it would have been waived.
MS. ALEXANDER: I am objecting on attorney-client privilege -- I'm objecting on attorney client privilege. He's asking content, what he said to one of his lawyers, "Did you ask..."
THE COURT: What's the difference between this and that question?
MR. GROSSMAN: It's the identical question.
THE COURT: Where is it?
MR. GROSSMAN: You hadn't asked to see those ads, had you?
THE COURT: Well, I think the privilege is waived to that extent, but not beyond that.
MR. GROSSMAN: That's the only question I'm asking.
THE COURT: All right.

MR. GROSSMAN: Okay.
THE COURT: Okay.
(Bench conference concluded.)
Q (By MR. GROSSMAN) Mr. Lucier, let me ask again. It's correct, is it not, that you had not asked to see those ads?
A I did -- I did not specifically ask to -- to see the ads.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

Q Okay. Now, without having ever seen an ad at any time in your life, you knew about cigarettes from your parents who smoked, right?
A It was --
Q I'll rephrase the question.
A Yeah.
Q You didn't need any advertisement to tell you that there were such things as cigarettes?
A No, I think I heard of cigarettes or understood what cigarettes were from the ads. My parents were smoking and were smoking when I was a very young age, but I think it was a mutual -- they did a lot of things that I did not understand that were, let's say, illuminated by ads.
Q Mr. Lucier, you didn't need ads to identify cigarettes as a product; they were in your house, right?
A That is correct.
Q You didn't need advertising to tell you that there was such a cigarette as Kent because your mother smoked them, right?
A Yes.
Q And, in fact, in starting to smoke, which you say was at the age of 11, you didn't rely on any representations about cigarettes at all; isn't that right?

6895

A Up until -- I'm sorry?
Q I'll ask it again.
A Okay.
Q In starting to smoke, which you say was at the age of 11, you didn't rely on any representations about cigarettes at all; isn't that right?
A No. No. No in the sense that by the time I was 11 years old, I had seen hundreds of advertisements.
MR. GROSSMAN: Move to strike as nonresponsive.
THE COURT: Denied. Next question.
MR. GROSSMAN: Miss Alexander, I'm going to play from July 24th, page 186, line 12 through 187, line 14.
THE COURT: Objection? I'm sorry.
MS. ALEXANDER: Are you planning to play it?
MR. GROSSMAN: Yes.
MS. ALEXANDER: We need to approach, your Honor.
THE COURT: Okay.
(The following bench conference was then had.)
MR. GROSSMAN: We can excise Miss Pole's contribution if that is the issue.
MS. ALEXANDER: It's all about Safeway that's no longer a defendant in the case.
MR. GROSSMAN: He was asked, Did you rely on Safeway --
THE COURT: Safeway?
MR. GROSSMAN: Safeway was once involved as --
THE COURT: Okay.
MR. GROSSMAN: Did you rely on Safeway in deciding to smoke? He said, I relied on Safeway to have cigarettes.

6896

And he was asked: Before you had your first cigarette, you never relied on Safeway to do anything; is that correct?
And he said: Before I had a cigarette, I didn't rely on anybody for anything.
And at this point I'm not -- it's simply the store that he purchased the cigarettes. We're going to discuss a lot of stores where he purchased cigarettes.

http://legacy.library.ucsf.edu/tid/epm05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

MS. ALEXANDER: Well, then ask him the question. There's a whole paragraph here on this line -- may I show the Court?
They quote the Complaint and then ask about Safeway, because a portion of the Complaint is about Safeway. It's irrelevant and immaterial to this --
THE COURT: Let's take a break. We're going to have to excise some of this.
(Bench conference concluded.)
THE COURT: We're going to take a short break. Ten minutes. Please don't discuss the case.
(The following proceedings were then had in open court outside the presence of the jury.)
THE COURT: Okay. The jury's outside. The door is closed.
I didn't read that thoroughly, but there's a reference to the Complaint. Safeway was originally a party defendant, right?
MR. GROSSMAN: Yes.
THE COURT: Okay. So unless it's absolutely critical -- let me just give some preliminary thoughts on this, and I'll make a ruling if it's necessary.

To the extent that that introduces the concept that Safeway was once a defendant, I would find that to be irrelevant, potentially prejudicial because the jury may speculate on why Safeway is no longer a party and come up with a variety of inferences.
If you can capture the essence of that by excluding reference to the fact that Safeway was a party, I think that that would address the principal concern that Miss Alexander expressed.
MR. GROSSMAN: I think we can do that, your Honor. And over the next five minutes, I'll work with the plaintiff. And maybe when you come back --
THE COURT: Okay.
(Recess.)
THE COURT ATTENDANT: Please come to order.
MR. GROSSMAN: Your Honor, I believe that Miss Alexander and I worked out a solution, which is quite simple.
THE COURT: Okay.
MR. GROSSMAN: I'm going to read the first part of this and omit the use of the word "defendant," so when Safeway comes up it will not be as a party.
THE COURT: Okay. That's agreeable?
MR. PAUL: That's agreeable, Mary.
MS. ALEXANDER: Yes.
THE COURT: Okay. Good.
Bring the jury in.
We're not going to start tomorrow until 10:00. Is that going to create any significant problem for anyone?

MS. ALEXANDER: No, your Honor.
MR. GROSSMAN: No.
THE COURT: Okay. Thank you.
MR. GROSSMAN: We'll be playing page 187, lines 7 to 14.
MELANIE ROBERTS: July 24th? July 24th?
MR. PAUL: I don't know the answer to that.
Yes. Melanoma okay.
(The following proceedings were then had in open court in

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

the presence of the jury.)
THE COURT ATTENDANT: Please be seated and come to order. Court is again in session.
THE COURT: Okay.
MR. GROSSMAN: Thank you very much, your Honor.
Q (By MR. GROSSMAN) Mr. Lucier, I'd like to direct your attention -- you have a copy of the depositions up there on your shelf? Yes.
If you could take out the deposition from July 24th, 2001. On page 186, I'm going to start reading on line 12, and then we'll play a little part of it on the video.
Let me know when you're there.
(Pause.)
THE WITNESS: Yes.
Q (By MR. GROSSMAN) Okay. Thank you.
Now, what I -- the question was asked: Let me read to you paragraph 109 of the Amended Complaint. "Beginning at a time unknown exactly to plaintiff, but prior to plaintiff's first cigarette as a minor and continuing thereafter, due to plaintiff's addiction, plaintiff saw, believed and relied on

the cigarette defendants' representations, including those placed in and around the retail facilities of Safeway, Inc. In reliance on them, plaintiff purchased various cigarettes, including but not limited to the brands herein."
Continuing, you were asked: The fact of the matter is, Mr. Lucier, that before you first had a cigarette you had never relied on any statement of Safeway with regard to any cigarette; is that correct?
And then there was an objection.
THE COURT: Wait, just a minute, please.
(Pause.)
JUROR NUMBER TEN: Lost a battery.
MR. GROSSMAN: Then there was an objection: Objection to the form of the question. I think it says the types of ads, if I heard you correctly, that were at Safeway. It doesn't mean they necessarily have been at Safeway for him to have relied on them if he saw them.
I asked you to answer the question.
And if we could have line 7 to 14 on the video, please.
(Videotape was then played and reported.)
Q (By MR. GROSSMAN) Would you answer the question, Mr. Lucier?
A I relied on Safeway to have cigarettes.
Q That was later in your life; is that correct?
A Correct.
Q Before you had your first cigarette you never relied on Safeway to do anything; is that correct?
A Before I had a cigarette, I didn't rely on anybody for

anything.
(Videotape concluded.)
Q (By MR. GROSSMAN) You didn't rely on anybody to do anything.
Now, Mr. Lucier, you never purchased cigarettes directly from R.J. Reynolds; is that correct?
A Correct.
Q You never purchased cigarettes directly from Philip Morris; isn't that correct?

http://legacy.library.ucsf.edu/tid/epm05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

A Uh, as far as I know.
Q You spoke of buying cigarettes at a local gas station in Clayton or Saint Louis. I think, it was right on the borderline there.
A No. It was in Saint Louis.
Q In Saint Louis?
A Yeah.
Q If it was illegal in Missouri to sell cigarettes to minors at that time, that was the gas station doing that, wasn't it? That was the man behind the booth?
A It -- well, it was all over, but that's where I bought my cigarettes.
Q Now, Mr. Lucier, let's talk about the Sixth Grade when you say you and your sister Therese were having those cigarettes. It's your testimony that you were smoking about two cigarettes a day at that time?
A Uh, what -- what year was that?
Q That's Sixth Grade when you were 11 and a half to 12 and a half.

A Uh, I believe so, yes. That's what I started out at.
Q And I understand it's your testimony that about a year later you started smoking your brother David's Winstons?
A Uh, yes.
Q Now, we'll come to that in a moment. But before you say you switched to Winstons, you were a regular smoker of two cigarettes a day?
A I'm -- by that time, a year later, it had increased.
Q So before you switched to Winstons, you were smoking every day?
A Uh, yes.
Q And it was at least two cigarettes a day?
A Uh, it -- what year are you talking about?
Q At the end of that first year, before you switched to Winston, you say you switched to Winstons.
A Uh, I know my cigarette consumption went up as each year went by. So I would say -- by 1962, I would say probably five cigarettes. '63 --
Q Okay.
A Okay.
Q Let's just -- we'll take it one step at a time.
A Okay.
Q By the time that you say that you switched to Winston, you say you were smoking about five cigarettes a day?
A Uh, I would say so, yes.
Q Now -- and you had decided to smoke; is that correct?
A Well, I don't think I decided. As much as a -- a kid of, what, 11 or 12 --

Q You --
A -- decides.
Q You had not given thought to stopping; is that correct?
A Correct.
Q Now, Winstons were available because your brother smoked them, right?
A They were available because my brother smoked, yes, and because I bought them too.
Q Now, I don't know if you're -- is the microphone on?
A Uh, yeah.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jshd0001

Q Okay. Good. I think it was just in a different place.
A Okay.
Q Okay. Thank you very much.
A You're welcome.
Q Now, Winstons were available because your brother smoked them?
A At first, yes.
Q But if -- if Winstons weren't available because your brother smoked them, if he smoked something else, you still would have continued smoking, wouldn't you?
A I would have continued smoking?
Q Yes, yes.
A Uh, yes.
Q If he were smoking Viceroy or Kools, you might have smoked those?
A I don't know.
Q But you weren't -- your decision to continue smoking, or your continuation of smoking, had nothing to do with the

availability of any particular brand?
A Uh, I'd say that's a generally fair statement.
Q Okay. Now, looking backwards, you've testified, have you not, that you believe that the initiation of what you later described as addiction was when you started smoking at 11 with Kent; isn't that right?
A Uh, I can't say with absolute certainty when the addiction took over. Just based on the amount of cigarettes, I would say when I was smoking eight to ten cigarettes.
Q Well, you believe that the process that led to what you've described as addiction began with the Kents when you were 11; is that correct?
A Sure.
Q And, Mr. Lucier, you already discussed that throughout your teenage years you actively hid your smoking from your parents. You also hid it from other adults; is that correct?
A Uh, adults that I knew.
Q Yeah.
A Not all adults. If -- not all adults.
Q There were 11 of you in the household --
A Mm-hmm.
Q -- and some but not all of you smoked; is that correct?
A Yes.
Q And not one of you ever smoked in front of your parents until you were adults; isn't that right?
A I don't know that for a fact.
Q If you could look with me on your July 26th deposition.
A Okay.

Q At page 194.
A July 26th?
Q Yes.
A And that was page 194?
Q 194. Take your time. Page 194.
A Okay.
Q Line 21. Do you see that?
A Uh, yes.
Q And I'm going to read to the next page, line 1.
MR. GROSSMAN: And, Miss Alexander, let me know if you have any problem.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

MS. ALEXANDER: Okay.
Q (By MR. GROSSMAN) Okay. Mr. Lucier, you were asked this last year. Actually, I'll start at line 16 on 194 to give it context.
(Pause.)
MS. ALEXANDER: Okay.
MR. GROSSMAN: Okay. Thank you.
Q (By MR. GROSSMAN) Mr. Lucier, you were asked this:
There were 11 of you, 11 children?
Answer: Correct.
Some of you smoked?
Answer: Yes.
Question: And not one of you ever smoked in front of your parents until you were adults; is that correct?
And you said: Yes, I think that's a generally true statement.
Then you were asked: And that's because you were sure

6905

they would disapprove; isn't that correct?
And the answer was: I think they would have been, yes.
Do you recall that testimony?
A Uh, that's my testimony.
Q Okay.
A But, I think you can see that I cannot state categorically --
THE COURT: You have to wait for the question, please. Next question.
THE WITNESS: Okay.
Q (By MR. GROSSMAN) Mr. Lucier, you -- you once smoked under the steps on the school grounds; is that right?
A Yes. Yes, I remember.
Q You were hiding; is that right?
A Pardon?
Q You were hiding; is that right?
A Yeah, I'd say so.
Q And that's because you knew that you weren't supposed to smoke at school; is that correct?
A I think so.
Q Now, there was a woman named Malvina (phonetic) Connolly who helped in your house, helping to do housework, and also, I believe, to help raise you and your brothers and sisters; is that right?
A No.
Q What was her role?
A House -- domestic housework.
Q She worked in your house five days a week; is that

6906

correct?
A She -- yes. Eight hours.
Q And you never smoked around her; isn't that correct?
A I don't know if I did or not.
Q July 23rd, page 89. Mr. Lucier, if you could take out the deposition in front of you of July 23rd, 2001, at page 89. And take your time.
MS. ALEXANDER: What lines, Counsel?
MR. GROSSMAN: It's going to be line 14 through 22.
THE WITNESS: And I'm sorry, what page?
Q (By MR. GROSSMAN) Page 89, line 14 through 22.
A Okay. Okay.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

Q I'll just read this. You were asked by your own lawyer: Were there any other adults that you smoked around or any adults you smoked around?
And you said: No.
A Okay.
Q Question: Were there other people in the house besides your mother and father?
And you answered, these are in your words: There was a -- well, a domestic help during the day.
A Yes.
Q Question: Did you smoke around him or her?
And you said: No.
A Okay.
Q Okay. Mr. Lucier, you've played an active role in this lawsuit; isn't that right?
A Uh, I'm not sure what you mean by "an active role."

6907

Q Well, we'll discuss a couple of parts of it.
Your wife is a lawyer?
A Uh, yes.
Q But even though she's a lawyer, you're the one who has paid closest attention to the lawsuit and has been involved in keeping up -- abreast with it most; isn't that right?
A As much as possible.
Q And, in fact, last year when we took your deposition -- and that was in San Francisco?
A Yes.
Q And it was at a time when the question was whether this case would be in San Francisco or Sacramento?
MS. ALEXANDER: Your Honor, this is irrelevant.
THE COURT: Sustained.
MR. GROSSMAN: If we may approach? It's foundation for what I'm going to be addressing.
THE COURT: Okay. Approach the bench.
(The following bench conference was then had.)
MR. GROSSMAN: The issue is Mr. Lucier testified that he planned to come to most days of trial, commuting three hours a day if his condition remained the same, and this goes to his stamina and his ability, and plus his interest in -- continuing interest in the lawsuit. And the fact that there was a motion to transfer is not -- not what I'm probing. It was just a predicate question to if the case remained in San Francisco, he testified under oath it was his intention to commute on a almost every day basis.
MS. ALEXANDER: So it's irrelevant and immaterial.

6908

THE COURT: The relevance is he thought he was up to it physically at that time?
MR. GROSSMAN: Yes, yes.
THE COURT: How long ago was this?
MR. GROSSMAN: This was a year and a half ago when his condition was, as I understand it, identical to what he is now.
MS. ALEXANDER: What he said was that was his plan.
MR. GROSSMAN: Unless he was near death, he planned to do it actually.
THE COURT: All right. I think it's relevant. There's nothing more than that.
MS. ALEXANDER: Yeah. But, you know, what happens is instead of asking him about his condition and what he said, he

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

does all this predicate stuff about talking about the lawsuit and his involvement, and that's irrelevant and immaterial.

THE COURT: It's argumentative.

MS. ALEXANDER: It's argumentative, and I request that it's not -- I also request that argumentative statements like being asked by your lawyer and things like that, those are argumentative and I request that they stop.

MR. GROSSMAN: We'll go into his question -- the question of his commuting.

MS. ALEXANDER: I'm talking about your predicates to your question.

THE COURT: We'll cut down the references.

MR. GROSSMAN: Okay. Sure.

THE COURT: All right.

MR. GROSSMAN: Okay.

(Bench conference concluded.)

THE COURT: You can proceed.

MR. GROSSMAN: Thank you, your Honor.

Q (By MR. GROSSMAN) Mr. Lucier, a year and a half ago when we took your deposition, there was a question of whether the case would be tried in San Francisco.

MS. ALEXANDER: Your Honor, again, this is irrelevant.

THE COURT: Go ahead. Ask the question.

Q (By MR. GROSSMAN) It was your intention if the case stayed in San Francisco to attend most days of trial and to commute three hours round-trip; isn't that correct?

A You're mischaracterizing what I said. I said if it was possible.

Q You said if your condition did not significantly deteriorate from where it was then, it was your intention to commute three hours a day and to attend most days of trial; isn't that correct?

A No, that's not correct either. I told you that --

THE COURT: Go ahead.

THE WITNESS: Go ahead?

THE COURT: Go ahead.

THE WITNESS: I told you that we had many friends and a tremendous support system both in San Francisco and Sacramento, and that there would be some commuting but we could rely on friends to stay at their place if it was in San Francisco.

Q (By MR. GROSSMAN) Let me -- let me play the following. This is going to be from a deposition on July 24th, page 95, line 14 through page 96, line 15.

A Page 95?

Q Page 95, line 14 through 96, line 15.

MS. ALEXANDER: No objection, if you don't read the colloquy.

MR. GROSSMAN: All right. It will be -- Melanie, it will be from page 95, line 14 through 25, and then page 96, line 4 through line 8, and then 13 through line 15. That takes out the lawyers colloquy.

All right?

MELANIE ROBERTS: Okay.

MS. ALEXANDER: Yes.

THE COURT: Okay.

MR. GROSSMAN: Thank you.

(Videotape was then played and reported.)

http://legacy.library.ucsf.edu/tid/epn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jshd0001

Q (By MR. GROSSMAN) It would be your intention to commute over three hours a day?
A Uh, correct.
Q And you current -- in your current condition you feel you could attend a trial and commute over three hours a day?
A Uh, in my current condition, yes.
Q Okay. And if your condition deteriorates, you don't know if San Francisco -- if the location of the trial in San Francisco will make it harder for you to attend, do you?
(Videotape stopped.)
(Videotape was then played and reported.)
THE WITNESS: Well, if I deteriorate to the point of death, no.
Q (By MR. GROSSMAN) How about if you deteriorate to a

6911

lesser degree?
A It would depend on --
MS. POLE: Are you saying --
THE WITNESS: It wouldn't make any difference to me as far as, you know, where it was held. I would try to attend the greater part of it.
(Videotape concluded.)
Q (By MR. GROSSMAN) And that deposition was taken last year, Mr. Lucier, at a time when it was your testimony that you believed you only had a few months to live; is that correct?
A Uh, yes.
Q Mr. Lucier --
MR. BARRON: Mr. Grossman, I think also 17 through 19 just follows. I don't know if you wanted to --
MR. GROSSMAN: Yes. I'll just read that, if it's all right with Miss Alexander. First let her read it. Page 96 on the 24th, line 17 through 19.
(Pause.)
MS. ALEXANDER: No objection.
Q (By MR. GROSSMAN) All right. And continuing from what we saw, you were asked: And you would want to live at home so you could see your daughter during the course of that trial?
And you answered: Well, I will be. I'll be going back and forth.
Now, Mr. Lucier, we were talking about things that you have done apart from your counsel in furtherance of this lawsuit. You've called various friends or your brother's friends to ask them to help you by appearing here at trial; is

6912

that correct?
A To help what?
Q Help you by appearing here at trial; is that correct?
A Uh, yes.
Q Well, we -- we got to see Mr. Kneffel and Mr. Casey a few days ago.
A Right.
Q You called both of them; is that correct?
A Yes.
Q You haven't seen either of them for about 40 years; is that right?
A Uh, correct.
Q Now --
A George Casey, I saw just the prior year at a reunion.
Q And generally you haven't kept up with him; is that

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

16 correct?
17 A In general, correct.
18 Q And --
19 A And may I make a correction?
20 I didn't ask them to come and attend the trial. I asked
21 them if they remember me smoking. They said, Yes. I said, Get
22 in touch with my lawyer. And that was the extent of the
23 conversation.
24 Q Or you said your lawyer will get in touch with them?
25 A It could have been, either way.
26 Q In any event, you have ten brothers and sisters. You
27 have Mr. Kneffel, Mr. Casey. And did you call anyone else?
28 A Uh, I believe I called the people who I remembered and

6913

1 who played cards with me -- or cards with my brother and myself
2 up in his room.
3 Q You -- you can find people who remembered that you
4 sometimes, to use the colloquial term, "bummed" Winston
5 cigarettes from your brother --
6 A No.
7 Q -- and people who recalled that you had smoked Kent,
8 but with ten brothers and sisters and all these other
9 acquaintances, you couldn't find anyone who remembered you as
10 ever being a regular Winston smoker; is that correct?
11 A I don't believe that's correct.
12 Q Could you identify a single person who recalls you as a
13 regular Winston smoker?
14 A I'm sorry. Who...?
15 Q Who recalls you as a regular Winston smoker.
16 A Um, that was in the -- what -- at any time that I smoked
17 Winston, or at the card game or --
18 Q That it was your regular brand.
19 A That it was my regular brand? Um, yeah, I'm sure there
20 are. None jump to mind, but --
21 Q All right.
22 A -- I'm sure there are.
23 Q Right. Why don't we move on. Why don't we move on to
24 something else.
25 Now, we discussed earlier, in earlier childhood, your
26 having an active interest in the world, and you maintained that
27 interest in the world after you moved to Saint Louis; isn't
28 that right?

6914

1 A Did I have a --
2 Q An interest in the world. An active, normal interest in
3 the world.
4 A As much as anybody, any kid.
5 Q When you moved to Saint Louis, you were reading the main
6 paper of the area, The Saint Louis Post Dispatch; isn't that
7 right?
8 A Uh, yes.
9 Q You started reading it in Sixth through Seventh Grade?
10 A Uh, I would say, yes.
11 Q And if a story interested you in the Post Dispatch, you'd
12 read it?
13 A If it interested me, yes.
14 Q In fact, in your teenage years, if you saw an article on
15 the relationship between smoking and health, it would probably
16 arouse your interest and you'd probably read it.

http://legacy.library.ucsf.edu/tid/epc05a00/pdf
Source: http://industrydocuments.ucsf.edu/docs/jshd0001

A No, not necessarily.
Q Could you take out the July 24th deposition, please.
A I'll tell you what, how about yes. If I -- if I said that but --
Q Okay. That's fine. That's fine. Sure. We'll move on.
A Go ahead.
Q By the way, wherever you lived, you preferred to read the predominant leading newspapers in whatever city you lived in; is that right?
A Yes.
Q When you lived in Florida, you read the Miami Herald?
A When I had a chance, sure.

Q When you lived in Phoenix, you read the Phoenix Gazette?
A Uh, yes. I'd say most of the time on Sundays we'd get -- you know, buy a Sunday paper.
Q You always got the Sunday paper; is that right?
A Uh, I don't know about always, but we got it regularly, frequently.
Q When you lived in Northern California, you read the Chronicle and Examiner?
A Uh, yes.
Q And here in Sacramento, you read The Bee?
A Yes.
Q You subscribed to the Wall Street Journal when you were in college?
A Uh, for a short period of time, yes.
Q And you've read it from time to time since then whenever it's been available to you?
A Um, not whenever, but I would read it if it was available.
Q And you've also read the New York Times when it's been available?
A Uh, yeah, as a general statement.
Q And just as we were saying before, if you saw an article in those papers on smoking and health, because you were a smoker and interested in the issue, you probably would have read it?
A It depends on what time period.
Q Well, we're talking now about the time period from the time you started reading the Saint Louis Post Dispatch.

A In 1960 --
Q In the 1960s.
A Early '60s? Like '61?
Q Let's say the mid-1960s.
A I tend to doubt it, no. It's -- smoking was really not an issue at that point.
Q Could you take out the July 26th deposition, please.
A Okay.
Q And look with me on page 200.
MR. GROSSMAN: Miss Alexander, I'm going to be looking at page 200, lines 10 through 20.
THE WITNESS: Okay.
MS. ALEXANDER: No objection.
Q (By MR. GROSSMAN) Mr. Lucier, you see this refers to the New York Times, the Wall Street Journal, the Chronicle, the Examiner and the Post Dispatch and the Miami Herald?
A Mm-hmm. Okay.

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

MR. GROSSMAN: Melanie, could you please play lines 10 through 14 on page 200 of the 26th deposition.
(Videotape was then played and reported.)
Q (By MR. GROSSMAN) Now, if you saw an article in those papers on smoking and health, because you were a smoker and interested in the issue, you would have read it, wouldn't you?
A Probably, yes, if I ran across it.
(Videotape concluded.)
Q (By MR. GROSSMAN) All right, Mr. Lucier. Starting in your teenage years -- we talked about the news shows that you watched earlier. Starting in your teenage years, you started

to regularly watch Meet the Press and Face the Nation on Sundays; is that right?
A Uh, I believe so, yes.
Q And later, you regularly watched the McNeal-Lehrer Hour on PBS; is that right?
A For a time, yes.
Q And you mentioned Nightline earlier. You were an avid watcher of Nightline at 11:30 every night; is that right?
A For a period of time, yes.
Q In fact, from the time it started all the way up until three or four years ago, you watched it almost every night; is that correct?
A Uh, I would say when -- when cable came in -- yes, until cable came in.
Q And then you became a watcher of Fox News?
A Uh, yes.
Q Let's return --
A Actually, CNN for at least two or three years, and then Fox came in --
Q Okay.
A -- and I watched that.
Q And you also watched Nightline in addition to those, is that right, until three or four years ago?
A Uh, it tapered off, but yeah.
Q Okay. Now, let's get back to the Seventh Grade. It's your testimony -- I want to resolve a potential conflict in your testimony.
MS. ALEXANDER: Your Honor, it's argumentative.

THE COURT: Okay. Sustain.
MR. GROSSMAN: Excuse me.
THE COURT: Okay. Just ask the question.
MR. GROSSMAN: Oh, okay.
Q (By MR. GROSSMAN) On direct testimony, you said that in Seventh Grade you were smoking eight cigarettes a day?
A Uh, let me see. How old was I?
Q Well, that -- Seventh Grade was when you were 12 to 13 years old, 12 and a half to 13 and a half years old.
A I would say five to eight cigarettes.
Q Last year at your deposition you said five cigarettes during the Seventh Grade; is that correct?
A Well, as close as I could estimate.
Q And the next year, Eighth Grade, was when you said eight cigarettes a day; is that correct?
A Uh, I believe so.
Q Now, in 1964 -- in January of 1964, you were in the Eighth Grade; isn't that right?

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

A Uh, I believe so, yes.
Q And it was then that the Surgeon General of the United States issued his famous report on smoking and health; isn't that correct?
A I don't know.
Q Well, was -- it was in the news at the time, wasn't it?
A I don't know. I don't recall it being in the news or seeing it.
Q It was something that was discussed at your dinner table, wasn't it?

A No, not that I remember.
Q Wasn't it something that was discussed on occasions when your family -- when your parents raised it and also when other children in the family raised it?
A I don't remember them ever raising it, whether it be -- I -- whether it be my brothers or my parents. I don't remember them ever raising it.
Q But you do remember those ads on the back of LIFE, don't you?
A Yes.
Q The Ninth Grade you attended DeAndres High School; is that right?
A Yes.
Q And at that time you've testified that you smoked 10 to maybe 12 cigarettes a day?
A Uh, yes.
Q Now, you were asked by Miss Alexander this morning what cigarettes you liked the most, and you gave a list. I just want to clarify something.
Through this period of time, on the weekends you might have your first cigarette in the morning, but on school days you didn't have your first cigarette until you went to the bus stop after school; is that correct?
A No, that's not correct. I would have cigarettes in the morning prior to school, but the -- and after I came home. But I -- there's a very vivid recollection that we all lit up at the bus stop.
Q July 23rd.

Mr. Lucier, I'd like to direct your attention to the deposition you gave on July 23rd, last year, at page 54.
A Okay.
Q And this is line 7 through 12.
A Okay. On page? I'm sorry.
Q 54.
MS. ALEXANDER: No objection.
Q (By MR. GROSSMAN) Mr. Lucier, you were asked by your own lawyer last year at your deposition --
MS. ALEXANDER: Your Honor, object to the predicate.
THE COURT: Sustain. Just ask the question.
Q (By MR. GROSSMAN) Okay. You were asked at your deposition last year: When would you typically have your first cigarette?
And your answer was: At that time, I would typically have it after school. And typically during that time my brother had friends and we played cards in my brother's room, and while we were playing cards I would smoke then too.
A Well, it also says that during the school year and then

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/jshd0001

in the morning during the summer. So during the summers, during the morning in the summers. I'm sure there was smoking during school time in the morning. And as I said, I have -- I have a vivid recollection of smoking at the bus stop.
Q That's not referring to the same period of time.
A Oh, is this 1964?
Q No. It's later. Your reading from a different part of the deposition dealing with a different period of time.
A Was that -- page 54, correct?

Q Yes. You're now on to page 55.
A Well, it's -- it's -- no. This is page 54.
THE COURT: We're going to have to proceed. By the way -- please, by way of question and answer here.
THE WITNESS: I'm sorry.
THE COURT: Next question.
Q (By MR. GROSSMAN) Mr. Lucier, through most of the time on school days you would have your first cigarette after school?
A No, it would depend on what time -- what year I was in school.
MS. ALEXANDER: Counsel, I object you to displaying the whole page up there. Just read that portion, please.
MR. GROSSMAN: Oh, I'm sorry.
Why don't we play, Melanie -- this refers to -- let's do page 53, line 25 through 54, line 12.
MS. ALEXANDER: Yes.
MELANIE ROBERTS: Can I have the date again, please?
MR. GROSSMAN: Oh, I'm sorry. This is from the 23rd.
(Videotape was then played and reported.)
Q What rate of smoking were you smoking in the Eighth Grade?
A Uh, approximately eight cigarettes per day.
Q Where did you smoke, and what time of day?
A Definitely after school during the school year, and then in the morning during the summer when I woke up, also in my brother's bedroom.
Q When would you typically have your first cigarette?

A At that time, I would typically have it after school. And typically during that time my brother had friends and we played cards in my brother's room, and while we were playing cards, I would smoke then too.
(Videotape concluded.)
Q (By MR. GROSSMAN) All right. Mr. Lucier, in the Tenth Grade you attended the --
THE COURT: We're going to -- we're going to break now.
MR. GROSSMAN: Okay. Thank you, your Honor.
THE COURT: We're going to take the evening recess. We're going to start tomorrow at 10:00. 10:00 o'clock tomorrow morning. Have a nice evening. Please don't discuss the case.
MR. GROSSMAN: Thank you, your Honor.
Thank you, Mr. Lucier.
(The following proceedings were then had in open court outside the presence of the jury.)
THE COURT: Okay. Was there something? The jury's gone.
MS. ALEXANDER: Your Honor, at sidebar, I made the request that the argumentative predicates to questions,

http://legacy.library.ucsf.edu/tid/epn05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/jshd0001

argumentative statements by counsel, such as, "Your lawyer asked you this question" in the question, and other argumentative statements by Mr. Grossman, and you did indicate to him that should stop.

It is continuing. He's continuing to do it. It is argumentative. And he also turns to the jury and looks at the jury when he's asking questions in an argumentative manner, and I ask that this continuing behavior and argumentative approach

to stop.

MR. GROSSMAN: Your Honor, as I recall at sidebar, Counsel's statements about argumentative predicates related to the question of his conversations with his lawyers, not at depositions.

I'm happy not to ask -- not to note who asked the question; although, frankly, since this was a deposition to preserve testimony, the questions asked by the plaintiffs' counsel were those that were intended to be relied upon by the jury at trial.

THE COURT: Well, you established that at the very outset. And preceding questions in that manner is really argumentative. So my expectation is that you won't do that again.

MR. GROSSMAN: I'm happy not to.

And as far as looking at the jury, I've been focusing on Mr. Lucier. I've noticed Mr. Paul spending a great deal of time looking at the jury, but this has been between Mr. Lucier and me.

MR. PAUL: Your Honor, I don't want to -- I don't want to --

THE COURT: We're not going to get into that.

MR. PAUL: But I know --

THE COURT: We're going home. Good night.

MR. GROSSMAN: Fair enough.

MR. PAUL: Thank you, your Honor.

MS. ALEXANDER: Thank you.

THE COURT: Thanks.

(Evening recess.)

---oOo---

http://legacy.library.ucsf.edu/tid/epn05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jshd0001

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS 6924
MICHELLE K. MADRID, CSR NO. 11401

http://legacy.library.ucsf.edu/tid/ept05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/jshd0001